

Plumbers and Steamfitters, Local Union No. 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and Robbins Plumbing & Heating Contractors, Inc. Case 21-CC-2528

April 29, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On December 8, 1981, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Plumbers and Steamfitters, Local Union No. 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: The hearing in this case held on August 4, 1981, is based on an unfair labor practice charge filed by Robbins Plumbing & Heating Contractors, Inc., herein called Robbins Plumbing, on April 30, 1981, and a complaint issued on May 19, 1981, on behalf of the General Counsel of the National Labor Relations Board for Region 21, alleging, as amended at the hearing, that the above-captioned Union, herein called Respondent, has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, herein called the Act, by picketing at a construction site at a gate reserved for neutral employers and by verbally inducing employees of a neutral employer to honor said picket line with an object of forcing and requiring the neutral employers to cease doing business

with Robbins Plumbing with whom Respondent has a labor dispute. Respondent filed an answer, amended at the hearing, denying the commission of the alleged unfair labor practices.¹

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Evidence

Ramona Properties, a limited partnership, is engaged in the development of real property and is presently constructing, among other things, a group of 60 townhouses at a site in Alhambra, California, herein called the Project. The general contractor employed by Ramona Properties on the Project is Venti Construction Company. During the period of time material to this case the Project was in its initial stages. The concrete was being poured for the footings and slabs. The only subcontractors whose employees were working at that time were Orange County Concrete, Robbins Plumbing, and Morgan Masonry, all of whom were working pursuant to contracts with Ramona Properties. Orange County Concrete is a union subcontractor whose employees were performing the concrete footing and slab work for the foundations. Robbins Plumbing is a plumbing contractor whose employees were doing the "rough" plumbing work normally done prior to the pouring of the cement for the foundations. Its employees are not represented by any labor organization.

The Project, which is situated next to a convent school, is bordered on the south by Ramona Road and on the west by Marengo Avenue. On the north and east it is adjacent to the convent school's property. The Project is located in a resident area and the portions of Ramona Road and Marengo Avenue which are adjacent to the Project are heavily traveled thoroughfares.² The Project is surrounded by a chain link fence.

On April 29, 1981,³ access to the site by motor vehicle was possible by way of a gate located on Marengo

¹ In its answer, as amended at the hearing, Respondent admits it is a labor organization within the meaning of Sec. 2(5) of the Act and admits that the primary employer herein, Robbins Plumbing, meets one of the Board's applicable discretionary jurisdictional standards and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. I therefore find it will effectuate the policies of the Act to assert jurisdiction herein.

² Benjamin Venti, who owns Venti Construction and is a general partner in Ramona Properties, testified that Ramona Road which runs parallel to a freeway, is a heavily traveled thoroughfare. Respondent's business representative, Charles McCune, testified that Ramona Road "has very little traffic." I have rejected McCune's testimony because in terms of demeanor Venti impressed me as a more credible witness. Moreover, it is undisputed that the Project, including the part of Ramona Road adjacent to the Project, is in the midst of a heavily populated residential area. The record also establishes that, during the approximate 2 days which McCune spent at the Project, virtually all of his time was spent on the Marengo Avenue side, at gate 2; only rarely was he on the Ramona Road side.

³ All dates herein refer to 1981 unless otherwise stated.

Avenue, referred to for the sake of convenience during the hearing as gate 2, which was approximately 25 feet wide and set back approximately 15 feet from the roadway. There was no direct access on this date to or from the Project for motor vehicles via Ramona Road. However, immediately adjacent to the Project on Ramona Road there is a convent parking lot with two gates. One of these gates, referred to during the hearing as gate 1, was approximately 20 feet wide and set back approximately 15 feet from the roadway. It is approximately 150 feet from gate 1 to the Project. On April 29 this 150 feet consisted of an ungraded steep hill, so it was impossible for motor vehicles to use this gate as a means of getting to or from the Project.

Since the Project is situated on a hill, it is impossible to see gate 1 from gate 2 and vice versa. During the time material herein, April 29 and 30, approximately seven employees of Robbins Plumbing employed at the Project were working in an area whereby they could be seen from gate 2, but they could not be seen from gate 1 due to the hill.

On April 29, after work had commenced, Respondent began picketing the Project at gate 2 and continued to picket at this gate until approximately 2 p.m. The next day, at or about 6 a.m., Respondent resumed its picketing at gate 2 and picketed until approximately 2 p.m. At no time during either day did Respondent picket gate 1. The legend on the picket signs read as follows:

Robbins Plumbing Unfair to Plumbers LU 398, not paying prevailing wages and fringe benefits. Sanctioned by Los Angeles County Building and Construction Trades Council, AFL-CIO and Teamsters Joint Council 42.

When Benjamin Venti, who is the owner of Venti Construction and a partner in Ramona Properties, arrived at the Project on April 29 at approximately 7 a.m. he observed Respondent's pickets at gate 2. He also observed that the trucks that were suppose to deliver concrete to Orange County Concrete were parked outside of the gate, their drivers refusing to cross the picket line. Venti promptly phoned Marvin Jabin, the lawyer for Ramona Properties, and advised him about the picketing. Jabin instructed him to prepare and post signs at gates 1 and 2. Pursuant to these instructions Venti, using a black marker and pieces of cardboard, printed two signs which read as follows:

Gate 2. This gate is for everyone except Robbins Plumbing. Robbins Plumbing must use gate number 1.

* * * * *

Gate 1. This gate for the exclusive use of Robbins Plumbing

Venti personally posted these signs at approximately 7:30 a.m. The sign referring to gate 2 was posted on a stake in front of that gate and the sign referring to gate 1 was posted on the chain link fence immediately adjacent to

that gate.⁴ As demonstrated by Respondent's Exhibit 3, the signs, although handprinted, were legible.

Immediately after posting these signs Venti spoke to the pickets and indicated he had posted the signs and asked the pickets to picket gate 1 instead of gate 2. The pickets ignored Venti. They continued to picket gate 2 and Respondent's business representative, McCune, who was carrying a picket sign, stated he intended to picket all of the gates.

Later that morning, at approximately 9 o'clock, Ramona Properties' attorney, Jabin, replaced the aforesaid signs which had been posted by Venti with larger signs which read as follows:

Gate 1. This gate is for the use of the personnel of the following subcontractors only: Robbins Plumbing. All others must use gate 2.

* * * * *

Gate 2. This gate is for the use of the personnel of all subcontractors except for Robbins Plumbing. The personnel of Robbins Plumbing must use gate 1.

The pickets ignored these signs and continued to picket gate 2. They informed Jabin that the signs posted by Jabin were no good because they were worded incorrectly.⁵

In the meantime, during the morning of April 29, the concrete trucks entered the jobsite and poured their cement. At this time the pickets ceased picketing temporarily pursuant to an arrangement among Respondent, Orange County Concrete, and Ramona Properties, whereby it was agreed that pickets would cease their picketing so that the concrete trucks could deliver their cement, if Robbins Plumbing's employees ceased working. After the concrete was poured, at approximately 10:30 a.m., the Robbins Plumbing employees went back to work, the picketing resumed, and all of the Orange County Concrete employees left the jobsite. The plumbers worked until approximately 4 p.m. when they left the project, exiting with their motor vehicles through gate 1 inasmuch as Ramona Properties had finished grading a driveway leading from the Project to gate 1.⁶ Earlier that day representatives of Robbins Plumbing instructed all of its personnel employed on the Project that under no circumstances were they to use gate 2, but to use only gate 1.

⁴ I reject Business Representative McCune's testimony that there was no sign posted at gate 1 at this time. Venti, who testified he posted the above-described sign at gate 1, impressed me in terms of his demeanor as a more credible witness. Moreover, his testimony was corroborated by Glen Scott, a vice president of Robbins Plumbing, who testified that when he arrived at the Project shortly after 8 a.m. he entered the Project on foot through gate 1 and that a sign was posted there at that time.

⁵ McCune testified he did not recall seeing any signs posted on April 29, other than Venti's "makeshift" signs, described *supra*. I reject his testimony because Venti and Jabin, who testified about the posting of the above-described signs impressed me, in terms of their demeanor, as more credible witnesses.

⁶ Ramona Properties had received permission from the owners of the convent school to use gate 1 as a means of entering and leaving the Project.

During the morning of April 29, after the pickets indicated to Jabin that they intended to ignore the reserved gate system and continue to picket gate 2 because the signs were not worded correctly, Jabin spoke to the lawyer who represented Robbins Plumbing. Robbins Plumbing's attorney suggested that Jabin post new signs which included the word "suppliers." As a result Jabin had a professional printer print up two new signs which were posted in place of the existing signs at gates 1 and 2 that evening after work ceased and the pickets left. These signs were posted in the same areas as those previously posted and read as follows:

STOP GATE NO. 1. THIS GATE IS RESERVED FOR THE SOLE AND EXCLUSIVE USE OF THE PERSONNEL AND SUPPLIERS OF THE SUBCONTRACTORS LISTED BELOW

ROBBINS PLUMBING

ALL OTHERS MUST USE GATE NO. 2

* * * * *

STOP—READ GATE NO. 2

THIS GATE IS RESERVED FOR THE SOLE AND EXCLUSIVE USE OF ALL PERSONS OTHER THAN THE PERSONNEL & SUPPLIERS OF THE SUBCONTRACTORS LISTED BELOW.

ROBBINS PLUMBING

ALL PERSONNEL & SUPPLIERS OF THE LISTED SUBCONTRACTORS MUST USE GATE NO. 1

These signs were posted at all times thereafter up to the date of the hearing in this case.

On April 29 the lawyer for Robbins Plumbing, after speaking to Jabin, sent a telegram to Respondent which was received by Business Representative McCune when he returned to his office later that afternoon. The telegram reads as follows:

RE: CONSTRUCTION JOBSITE AT 1810 SOUTH MAR-
ENGO, ALHAMBRA, CA

PLEASE BE ADVISED THAT A RESERVED GATE SYSTEM HAS BEEN ESTABLISHED AT THE ABOVE JOBSITE. A GATE, LABELED GATE #1, HAS BEEN RESERVED FOR THE SOLE AND EXCLUSIVE USE OF PERSONNEL AND SUPPLIERS OF ROBBINS PLUMBING, THE PARTY WITH WHOM YOU HAVE A DISPUTE, AND IS LOCATED ON RAMONA ST. SHOULD YOU WISH TO PICKET ROBBINS PLUMBING AT THE ABOVE JOBSITE, PLEASE CONFINE YOUR PICKETING TO THAT GATE. IF YOU PICKET ROBBINS PLUMBING AT ANY OTHER LOCATION AT THIS JOBSITE, WE WILL CONSIDER IT ILLEGAL SECONDARY ACTIVITY, AND WILL TAKE ALL APPROPRIATE LEGAL ACTION.

On Thursday, April 30, Ramona Properties' project superintendent, Ben Ribera, arrived at the jobsite at approximately 5:55 a.m. The picketing had already com-

menced at gate 2. Ribera credibly testified that shortly thereafter he observed the plumbers arrive and enter the jobsite through gate 1.⁷ Respondent Business Representative McCune testified that on April 30 he arrived at the Project at approximately 5:30 a.m., when it was still dark, and drove to gate 1 to determine whether the information in the telegram he had gotten from Robbins Plumbing's lawyer was accurate. Using the light from his automobile headlights, McCune testified, he observed the sign which had been posted on gate 1 and observed that the gate was closed and appeared to be locked. McCune further testified that at approximately 6 a.m. he drove up to gate 2, that this gate was opened, and that he observed the plumbers were on the site performing their work. Insofar as McCune's testimony warrants the inference that the plumbers, on April 30, used gate 2 rather than gate 1 to enter the project, I reject such an inference because the testimony of Ribera, described supra, was given in a sincere and persuasive manner, and in terms of demeanor Ribera impressed me as a more credible witness than McCune.

On April 30 when Venti arrived at the Project at approximately 7 a.m. he observed that there were several employees of Orange County Concrete, who were scheduled to work that day, sitting in their motor vehicles outside of gate 2, honoring the picket line. After speaking to the Orange County Concrete workers, Venti spoke to the pickets, one of whom was Business Representative McCune. Venti asked why they were still picketing gate 2 even though it had been properly posted. Venti asked them to picket gate 1 instead of gate 2. McCune replied, "We are picketing all your . . . gates." The picketing continued at gate 2. At this time a business representative from another labor organization who was present informed Venti, in McCune's presence, "Your other gate is obscure." Shortly thereafter a group of steelworkers or rodbusters, who were under contract with Orange County Concrete to perform some work and who had previously been working on the Project, drove up to gate 2 and, as one of the steelworkers walked up to the gate, a picket stated to him, in McCune's presence, "You are not going to cross this gate, are you." The steelworker replied, "Hell no, I am not," and left the site.

Since one of the business agents, as described above, had stated that gate 1 was "obscure," Venti later that morning hand lettered a sign stating, "Gate 1 around the corner" and posted it at gate 2 with the other sign which was already posted. Later that morning Jabin replaced the "Gate 1 around the corner" sign with a sign which stated: "Notice Gate No. 1 is on Ramona Road around the corner" with an arrow pointing in the direction of

⁷ I have taken into account that Ribera testified that he was not sure it was Thursday, April 30, or Friday, May 1, when he observed the plumbers enter using gate 1, explaining that on one of those days the plumbers did not work. The record reveals that Friday, May 1, was the day the plumbers did not work. Accordingly, it is plain that Ribera was referring to Thursday, April 30, as the day he observed the plumbers enter gate 1. Moreover, since Respondent stopped its picketing on April 30, this conclusion is bolstered by Ribera's further testimony that, on the morning he observed the pickets enter through gate 1, there was a picket line in front of gate 2.

gate 1. The pickets ignored these additional signs and continued to picket gate 2; they did not picket gate 1. At this time Jabin spoke to the pickets and asked who was in charge of the picket line. He was informed that a business representative from the Los Angeles Building Trades Council who was named "Al" was in charge and introduced to Al. Jabin, in the presence of the pickets including McCune, informed Al that it was illegal for them to be picketing gate 2 in view of the Company's reserved gate system and that they should be picketing gate 1. The pickets, including Al, replied that the wording of the sign was no good. In addition, Al stated that they were not picketing Robbins Plumbing to get that Company to join the Union, but only because Robbins Plumbing did not pay prevailing wages. In response to Jabin's question, Al stated that they would cease picketing if Jabin could prove to them that Robbins Plumbing was paying the prevailing wage scale. In addition, another person in the group informed Jabin that if the NLRB told them that the sign was okay and they should not picket that they would stop picketing.

On Friday, May 1, Robbins Plumbing's employees were directed not to report to work at the Project. Respondent was notified of this and, as a result, did not picket on May 1. The employees of Robbins Plumbing resumed work on Monday, May 4, but Respondent did not resume its picketing and has not picketed the Project since April 30.

The above-described finding that on April 29 and 30, when informed by Venti that Ramona Properties had posted a reserved gate where Respondent should picket, that Respondent's business representative, McCune, informed Venti that Respondent intended to picket all of the gates, is based on Venti's testimony. McCune, who was present at the picket line for several hours on April 29 and 30, in effect denied saying this. McCune initially testified that although representatives of Ramona Properties tried to talk to him about the picketing that he did not talk to them. Then he inconsistently testified that on April 30, at or about 6 or 6:30 a.m. when Venti told him there was a reserved gate at gate 1 which Respondent should picket rather than gate 2, McCune informed Venti that gate 1 was not a valid reserved gate because the plumbers were on the jobsite and the only way they could have gotten on the site was by using gate 2. But later, during the hearing, McCune again contradicted himself, now testifying that he did not speak to anyone connected with the Project about the fact that he thought the reserved gate was invalid, and specifically denied speaking to Venti on April 30, other than saying hello or good morning. Venti, who in terms of his demeanor impressed me as a sincere and reliable witness, testified that when he spoke to McCune about the reserved gate that McCune, as described above, said nothing other than that Respondent intended to picket all of the gates despite the reserved gate system. In view of the inconsistencies in McCune's testimony and the fact that McCune, in terms of his demeanor did not seem to be a reliable or trustworthy witness, whereas Venti did, I have rejected McCune's testimony that on April 30 he informed Venti that he was continuing to picket gate 2 rather than gate 1 because he thought the plumbers had

used gate 2 to enter the site that morning. Rather, I find McCune made no such statement to Venti, but at all times, when confronted by Venti about the reserved gate simply stated that Respondent intended to disregard the reserved gate system and to picket all of the gates and did not explain himself.

B. Discussion and Ultimate Findings

1. Applicable principles

Section 8(b)(4)(i) and (ii)(B) states in pertinent part that it is an unfair labor practice for a labor organization or its agents:

(4)(i) . . . to induce or encourage any individual employed by any person . . . to engage in a strike . . . to (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is:

* * * * *

(B) forcing or requiring any person . . . to cease doing business with any other person . . . Provided, that nothing contained in this clause (B) shall be construed to make unlawful, any . . . primary picketing.

These provisions implement "the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B. v. Denver Building and Construction Trades Council, et al.*, 341 U.S. 675, 692 (1951); see *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612, 620-627 (1967). In each case, therefore, the union's conduct must be scrutinized to ascertain whether it engaged in protected primary or illegal secondary activity.

The controlling factor in determining the legality of picketing is not its effect, but its object. *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO [General Electric Company] v. N.L.R.B.*, 366 U.S. 667, 672-674 (1961); *Ramey Construction Company Inc. v. Local Union No. 544, Painters, Decorators and Paperhangers of America*, 472 F.2d 1127, 1131 (5th Cir. 1973). If an object of the picketing is to pressure a neutral employer, the activity is secondary and unlawful. The picketing is protected, however, where the union's sole object is to influence the primary employer, even if there are incidental effects on the neutrals. *N.L.R.B. v. Denver Building and Construction Trades Council, supra*, 341 U.S. at 687-689; *N.L.R.B. v. Nashville Building and Construction Trades Council, supra*, 425 F.2d at 391.

Frequently, there is no "glaringly bright line" between what constitutes primary and secondary picketing. *Local 761, Electrical Workers v. N.L.R.B., supra*, 366 U.S. at 673. That distinction may be particularly difficult to draw in "common situs" situations, such as this case, where the primary and neutral employers are working on the same premises simultaneously. Construction con-

tractors involved on a common situs are neutrals as to each other's labor disputes and are, accordingly, entitled to the protection of Section 8(b)(4). *N.L.R.B. v. Denver Building and Construction Trades Council*, *supra*, 341 U.S. at 689-690 (1951). *Nashville Building and Construction Trades Council*, 383 F.2d 562, 564-566 (6th Cir. 1967). As a consequence, while a union is allowed to picket the project in furtherance of its dispute with the primary employer, it nevertheless is obligated to make every reasonable effort to minimize the impact on neutrals of the inducements and restraints inherent in the picket line. *N.L.R.B. v. Nashville Building and Construction Council*, *supra*, 425 F.2d at 391; *American Bread Company v. N.L.R.B.*, 411 F.2d 147, 154 (6th Cir. 1969).

In *Sailors Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547, 549 (1950), the Board articulated the following evidentiary criteria for evaluating the legality of picketing in common situs situations:

[P]icketing . . . is primary if it meets the following conditions: (a) The picketing is strictly confined to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business on the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer.

Accord: *Local 761, Electrical Workers v. N.L.R.B.*, *supra*, 366 U.S. at 679; *N.L.R.B. v. Nashville Building and Construction Trades Council*, *supra*, 425 F.2d at 390-391. These standards are not applied mechanically. However, failure to comply with the *Moore Dry Dock* criteria provides a strong, although rebuttable, presumption that the picketing had an unlawful secondary purpose. *Ramey Construction Co., Inc. v. Local Union No. 544*, *supra*, 472 F.2d at 1132; *International Brotherhood of Electrical Workers, Local 480, AFL-CIO [Gulf Coast Bldg. & Supply Co.] v. N.L.R.B.*, 413 F.2d 1085, 1089 (D.C. Cir. 1969); *N.L.R.B. v. Northern California District Council of Hod Carriers and Common Laborers of America, AFL-CIO [Sunset International Petroleum Corp.]*, 389 F.2d 721, 725 (9th Cir. 1968), *enfg.* *Northern California District Council of Hodcarriers and Common Laborers of America, AFL-CIO (Joseph's Landscaping)*, 154 NLRB 1384 (1965).

The situs of a union's dispute with an employer may be localized in a common situs construction project situation by establishing a separate gate for the primary employer. *Local Union No. 519, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO [H. L. Robertson and Associates, Inc.] v. N.L.R.B.*, 416 F.2d 1120, 1125 (D.C. Cir. 1969). If picketing is not confined to an area reasonably close to the entrance "reserved" for the primary and its employees, the union is considered to be pursuing unlawful secondary objectives. *Carpenters Local 470, United Brotherhood of Carpenters and Joiners of America, AFL-CIO [Mueller-Anderson Inc.] v. N.L.R.B.*, 564 F.2d 1360, 1363 (9th Cir. 1977); *Kelly Electric Co.*, 216 NLRB 141, 144 (1975), *enfd. sub nom. N.L.R.B. v. Nashville Building and Construction Trades*

Council, *supra*, 383 F.2d at 564-565; *Building and Construction Trades Council of New Orleans, AFL-CIO*, 155 NLRB 319, 326 (1965), *enfd. sub nom. Markwell and Hartz, Inc. v. N.L.R.B.*, 387 F.2d 79, 81 (5th Cir. 1967), *cert. denied* 391 U.S. 914.

The *Moore Dry Dock* criteria are not the only factors considered relevant in assessing the purpose of a union's picketing. Other external evidence—union statements or actions, for example—may manifest the existence of a secondary object. *N.L.R.B. v. Nashville Building and Construction Trades Council*, *supra*, 425 F.2d at 391; *IBEW, Local 480 v. N.L.R.B.*, *supra*, 413 F.2d at 1089; *N.L.R.B. v. Northern California District Council of Hod Carriers, etc.*, *supra*, 389 F.2d at 725; *N.L.R.B. v. International Hod Carriers, Building and Common Laborers' Union of North America, Local No. 1140, AFL-CIO [Gilmore Construction Co.]*, 285 F.2d 397, 401 (8th Cir. 1960).

2. The April 29 picketing

I am of the opinion that on April 29, by picketing gate 2 rather than gate 1, Respondent did not violate Section 8(b)(4)(B) of the Act because I am persuaded that picketing at gate 1 would not have provided reasonable assurances to Respondent that its message would be carried to the employees and suppliers of Robbins Plumbing and there is insufficient evidence that Respondent's picketing was accompanied by any other conduct which warrants an inference of illegality.

On April 29, when Respondent was notified that gate 1 had been posted for Robbins Plumbing, Respondent's business representative, McCune, who was in charge of the picket line, observed that it was impossible for motor vehicles to enter or leave the Project using gate 1.⁸ This condition existed on April 29 for the entire time Respondent's pickets were present at the Project. Because of this, Respondent reasonably believed that Robbins Plumbing's employees and suppliers could not use gate 1 and would have to use gate 2.⁹ And, with respect to the suppliers of Robbins Plumbing, this belief was reinforced by the fact that the language of the reserved gate signs posted on April 29 clearly indicated that the suppliers of Robbins Plumbing were required to use gate 2, rather than gate 1. In view of the foregoing circumstances it was not unreasonable on April 29 for Business Representative McCune to refuse to move the picket line from gate 1 to gate 2, in response to Venti's request. That McCune expressed his refusal in terms of an intent to picket all of the gates is not sufficient, under the circumstances, to taint the picketing. Likewise, the fact that McCune entered the Project on April 29 is insufficient to taint the picketing where, as here, there is no evidence that McCune's purpose in entering the Project was to enmesh neutrals in Respondent's dispute with Robbins Plumbing.

⁸ The driveway to and from the Project from gate 1 was not graded for motor vehicle traffic until late in the afternoon on April 29, after the pickets left the project.

⁹ On April 29, prior to the picketing, the employees of Robbins Plumbing had driven their motor vehicles on to the Project when they came to work.

Based on the foregoing, I find that Respondent's picketing of the Project on April 29 did not violate Section 8(b)(4)(i) and (ii)(B) of the Act.

3. The April 30 picketing

I am of the opinion that Respondent's picketing of gate 2 on April 30 violated Section 8(b)(4)(i) and (ii)(B) of the Act.

On April 30 Respondent continued to picket gate 2, instead of gate 1, despite its knowledge that gate 1 was now readily accessible to motor vehicle traffic, that the signs posted at these gates now plainly required that Robbins Plumbing's suppliers as well as employees use gate 1, and that the sign at gate 2 clearly indicated where gate 1 was located. There is no evidence that either the employees or suppliers of Robbins Plumbing used gate 2 rather than gate 1.¹⁰ Nonetheless, Respondent continued to picket gate 2 which Respondent knew was reserved exclusively for the employees and suppliers of the neutral employers and ignored gate 1 which Respondent knew was reserved exclusively for the use of the employees and suppliers of Robbins Plumbing, the employer with whom it had its labor dispute. Respondent's failure to comply with the reserved gate system on April 30, under the circumstances of this case, warrants the inference that its picketing on that date was conducted with an impermissible, secondary object.

Respondent argues that on April 30 it continued to picket gate 2 rather than gate 1 because Respondent's business representative, McCune, had a good-faith belief that Robbins Plumbing's employees had used gate 2 on April 30 to enter the Project. This argument is based on McCune's testimony that on April 30, when he arrived, at the Project, the plumbers were at work despite the fact that gate 1 was closed and locked whereas gate 2 was open, and that from these circumstances McCune concluded that the plumbers had used gate 2 to enter the Project. I reject McCune's testimony concerning what motivated him to continue picketing gate 2 rather than gate 1. As I have indicated *supra*, McCune, in terms of his demeanor, did not impress me as a sincere or reliable witness. Moreover, on April 30 when Venti advised McCune of the reserved gate system and asked him to picket gate 1 rather than gate 2, McCune simply stated he intended to picket all of the gates. He did not give any reason for his refusal to honor the reserved gate system.¹¹ I am convinced that, if McCune's refusal to move the picket line from gate 2 to gate 1 was motivated by his belief that the plumbers had used gate 2, McCune would have informed Venti. It is for these reasons that I have rejected McCune's testimony that in refusing to honor the reserved gate system on April 30 he was motivated by a belief that the plumbers had used gate 2.

Respondent also argues that its right legitimately to publicize its dispute with Robbins Plumbing was comprised by the fact that Robbins Plumbing's employees

were not visible from gate 1, thus it had no obligation to restrict its picketing to that gate. This argument is without merit.¹² The gate reserved in the instant case for the employees and suppliers of Robbins Plumbing gave Respondent ample opportunity to contact them each and every time they entered and departed from the Project. Similarly Respondent's right to convey its message to the general public was not improperly restricted by the location of the reserved gate which was located on a publicly traveled thoroughfare and the picket signs would be plainly visible to any traffic on that thoroughfare. That the employees of Robbins Plumbing would not have been able to see the picket signs from their actual work locations if the picketing was conducted at gate 1 is totally irrelevant. Neither the Board nor any court, to my knowledge, has ever suggested that the pickets at a common situs have a right to be constantly visible to the primary employer's employees while they are working on the site.¹³

Based on the foregoing I find Respondent's picketing of the Project on April 30 had an impermissible secondary object and for this reason violated Section 8(b)(4)(i) and (ii)(B) of the Act.¹⁴

4. The verbal inducement to honor the picket line

As I have found *supra*, on April 30 when a steelworker who was scheduled to work that day on the Project for Orange County Concrete approached gate 2 to go to work, one of the pickets, in the presence of Business Representative McCune, stated to him: "You are not going to cross this gate, are you?" The steelworker replied, "Hell no" and left the site.

Since "[t]he words 'induce or encourage' are broad enough to include in them every form of influence and persuasion," *International Brotherhood of Electrical Workers, Local 501, et al. [Samuel Langer] v. N.L.R.B.*, 341 U.S. 694, 701-702 (1951), I find that the statement to the steelworkers by the picket, expressed in McCune's presence, constituted unlawful inducement for a proscribed object within the meaning of Section 8(b)(4)(i)(B) of the Act and, since it succeeded in causing the steelworker to refuse to perform services for his employer, it also operated as an unlawful restraint of that employer in violation of Section 8(b)(4)(ii)(B) of the Act.

¹⁰ *Local 453, International Brotherhood of Electrical Workers, AFL-CIO (Southern Sun Electric Corp.)*, 237 NLRB 829 (1978), *enfd.* 620 F.2d 170 (8th Cir. 1980), relied on by Respondent is significantly different from the instant situation.

¹¹ I note that the logic of Respondent's argument would require that when pickets would not be visible no matter where a reserved gate was established because the worksite is so large, so enclosed, or so dense with improvements that the pickets would be entitled to entry onto the site to picket within the visibility of the primary employer's employees.

¹² It is well settled that a union's object is prohibited where an object, not necessarily the sole object, is proscribed. See *N.L.R.B. v. Denver Building and Construction Trades Council*, *supra*, 341 U.S. at 688-689, quoted in *Local 742, United Brotherhood of Carpenters and Joiners of America [J. L. Simmons Company] v. N.L.R.B.*, 533 F.2d 683, 689 (D.C. Cir. 1976). Thus, while Respondent's picketing may also have had an object of publicizing Robbins Plumbing's failure to pay the prevailing wages and benefits in the community, it is no defense to the violation herein because the record establishes that another object of the picketing was to enmesh neutral employers in Respondent's dispute with Robbins Plumbing.

¹⁰ As I have found *supra*, on April 30 the employees of Robbins Plumbing used gate 1 to enter the Project to work.

¹¹ As described *supra*, the only reasons advanced by Respondent on April 30 for its refusal to picket gate 1 rather than gate 2 was that gate 1 was "obscure" and that there was something wrong with the language on the posted signs.

On the basis of the foregoing findings of fact, and on the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Robbins Plumbing & Heating Contractors, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Ramona Properties, Morgan Masonry, Orange County Concrete, and Venti Construction Company are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(B) of the Act.

3. The Respondent, Plumbers and Steamfitters, Local Union No. 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing the construction jobsite located between Marengo Avenue and Ramona Road in Alhambra, California, on April 30, 1981, at gate 2, and on the same date by verbally inducing and encouraging an employee of a neutral employer to honor said picket line, with an object of forcing or requiring Venti Construction Company, Orange County Concrete, and Morgan Masonry, from doing business with Ramona Properties in order to compel Ramona Properties to cease doing business with Robbins Plumbing & Heating Contractors, Inc., Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action which effectuates the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁵

The Respondent, Plumbers and Steamfitters, Local Union No. 398, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Ramona, California, its officers, agents, representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed by Venti Construction Company, Orange County Concrete, and Morgan Masonry, or any other person engaged in commerce or in an industry affecting commerce, to

¹⁵ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

strike or refuse in the course of their employment to use, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service for said persons with an object of forcing or requiring said persons to cease doing business with Ramona Properties in order to compel Ramona Properties to cease doing business with Robbins Plumbing & Heating Contractors, Inc.

(b) Threatening, coercing, or restraining Venti Construction Company, Orange County Concrete, and Morgan Masonry, or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring said persons to cease doing business with Ramona Properties in order to compel Ramona Properties to cease doing business with Robbins Plumbing & Heating Contractors, Inc.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in its business offices, meeting halls, and in all places where notices to members are customarily posted copies of the attached notice marked "Appendix."¹⁶ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notices to the Regional Director for Region 21 for posting by Ramona Properties, Orange County Concrete, Morgan Masonry, and Venti Construction Company, if willing, at locations where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT induce or encourage individuals employed by Venti Construction Company, Orange County Concrete, and Morgan Masonry, or any other person engaged in commerce or in an industry affecting commerce, to strike or refuse in the course of their employment to use, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service for said persons with an object of forcing or requiring said persons to cease doing business with Ramona Properties in order to compel Ramona

Properties to cease doing business with Robbins Plumbing & Heating Contractors, Inc.

WE WILL NOT threaten, coerce, or restrain Venti Construction Company, Orange County Concrete, and Morgan Masonry, or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring said persons to cease doing business with Ramona Properties in order to compel Ramona Properties to cease doing

business with Robbins Plumbing & Heating Contractors, Inc.

PLUMBERS AND STEAMFITTERS, LOCAL
UNION No. 398, UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY
OF THE UNITED STATES AND CANADA,
AFL-CIO